



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/580,755	02/19/2007	Nicholas Polge	70344/UST	1245

85981 7590 11/08/2011
Syngenta Corp Protection, Inc.
410 Swing Road
Greensboro, NC 27409

EXAMINER

PRYOR, ALTON NATHANIEL

ART UNIT	PAPER NUMBER
----------	--------------

1616

MAIL DATE	DELIVERY MODE
-----------	---------------

11/08/2011

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/580,755	Applicant(s) POLGE, NICHOLAS	
	Examiner ALTON PRYOR	Art Unit 1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 September 2011.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on ____; the restriction requirement and election have been incorporated into this action.
- 4) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 5) ☒ Claim(s) 1-23 is/are pending in the application.
- 5a) Of the above claim(s) 8-16,20-23 is/are withdrawn from consideration.
- 6) ☐ Claim(s) ____ is/are allowed.
- 7) ☒ Claim(s) 1-7 and 17-19 is/are rejected.
- 8) ☐ Claim(s) ____ is/are objected to.
- 9) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 10) ☐ The specification is objected to by the Examiner.
- 11) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 12) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Applicant's arguments filed 9/12/11 have been fully considered but they are not persuasive. Previous rejections and other issues not addressed below are withdrawn.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-7,17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ratledge (USPN 3997322; 12/14/76) in light of Applicant's disclosure. Ratledge teach petroleum hydrocarbon spray oils in aqueous emulsion provides carries that enhance the effectiveness of certain herbicides (column 2 lines 14-36). Ratledge teaches that the petroleum hydrocarbon component includes paraffinic hydrocarbons (column 2 lines 37-59). Ratledge et al. teach that spray oil can contain emulsifying agents (surfactants). See column 3 line 45 - column 4 line 21. Ratledge teaches that triazine herbicides are included in the spray oil and that the spray oil is applied to soil (column 1). Ratledge teaches a method of treating maize and sugar cane with the composition (column 1 lines 5-11). Ratledge does not specify the instant C13 to C55 carbon number for the instant paraffinic oil and the elected metolachlor herbicide. It would have been obvious to employ the instant C13 to C55 distributed paraffinic oil since Ratledge mentions no specific carbon distribution for the paraffinic hydrocarbon. Also note, Ratledge teaches that petroleum hydrocarbon (paraffinic oil) spray oils

Art Unit: 1616

enhance the effectiveness of certain herbicides (column 2 lines 14-36). The term “certain herbicides” makes it obvious to the possibility of trying herbicides other than the triazines specifically recited in Ratledge. In the absence of unexpected results for the C13 to C55 distributed paraffinic oil and metolachlor, In addition, the instant disclosure suggest that triazines and acetamide (metolachlor) herbicides are equivalent (see instant claims 5 and 6). Thus, Ratledge and instant disclosure make obvious the use of the instant paraffinic oil and metolachlor. Since Ratledge is silent to the carbon distribution of the paraffinic oil, it would have been obvious to employ the instant paraffin oil at the time of Ratledge's invention.

Response to Applicant's Argument

Applicant argues that the Examiner relies on Applicants' own claims 5 and 6 to establish equivalence. However, Applicant's own specification does not qualify as prior art under 103(a). The Examiner argues that the specification is used as an admission rather than as prior art. The specification teaches that metolachlor and triazine are equivalent since the claims recite that either compound in the claims can be used.

Applicant argues that Ratledge teach or suggest to an Artisan in the field to make a herbicide composition comprising metolachlor. Applicant argues that the phrase “certain herbicides” recited in Ratledge refer to specific herbicides recited in Ratledge, not to metolachlor as recited in the instant claims. The Examiner argues that the specification recites metolachlor in Markush group. The Markush group also recites triazine. This teaching suggests that compounds recited in the Markush group are

Art Unit: 1616

exchangeable and functionally equivalent, making metolachlor obvious to use by Ratledge.

Applicant argues that Ratledge does not teach or suggest to an Artisan in the field to make a herbicide composition comprising a hydrocarbon fluid consisting of a paraffin oil derived from a refined fraction of petroleum oil with a distillation range at 10 mm Hg of about 190 degree C to 280 degree C. Applicant argues that Ratledge teaches petroleum hydrocarbon oil fraction having a distillation range at 10 mm Hg of 300 degree F (148 degree C) to 500 degree F (260 degree C). The pressure/temperature variants in Ratledge do not make the instant pressure/temperature variants obvious. The Examiner disagrees. The Examiner argues that it is obvious based on the pressure/temperature requirements in Ratledge the fraction obtained will contain the C13 – C55 paraffins claimed since the pressure/temperature variants in Ratledge overlap those claimed. Note, the instant claims employ “comprising” type language, making the instant claims open to the inclusion of additional paraffins fractions not claimed. This is okay since Ratledge and instant invention employs overlapping pressure/temperature ranges, making it clear that Ratledge will yield paraffins falling with the claimed C13 to C55 distributed paraffinic oils.

Applicants argue that Ratledge teaches an artisan in the field to use a petroleum hydrocarbon oil fraction having a distillation range at 10 mm Hg of 300 degree F (148 degree C) to 500 degree F (260 degree C). On the other hand, the instant claims disclose petroleum oil with a distillation at 10 mm Hg of about 190 degree C to 280 degree C. The Examiner argues that based on pressure and temperature requirements

Art Unit: 1616

of the petroleum oil claimed and taught by Ratledge there is overlap. Thus, the petroleum oil taught in Ratledge makes obvious the petroleum oil claimed.

Claims 1,3-7,17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Musselman (USPN 3551131; 12/29/70) in light of instant specification. Musselman et al. teach a composition comprising a herbicide, a non-phytotoxic oil such as paraffins having up to C18 (column 1). Musselman et al. teach that triazine herbicides are included in the composition and that emulsifiers, i.e. surfactants (column 1 lines 36-43) can be added to the composition (column 1). Musselman teaches a method of treating maize with the composition (column 1 lines 24-28). Musselman et al. does not exemplify an invention comprising instant herbicides and instant C13 to C55 distributed paraffin or wherein the herbicide is metolachlor. It would have been obvious to make an invention comprising a C13 to C18 paraffin. One would have been motivated to do this since Musselman et al. suggest the combination. Also note, Musselman et al. teaches that a variety of herbicides is suitable the instant invention (column 2 lines 31-34). The term "and the like" in reference to useful herbicides makes it obvious to try herbicides other than the triazines specifically recited in Musselman et al. In addition, the instant disclosure suggest that triazines and acetamide (metolachlor) herbicides are equivalent (see instant claims 5 and 6). Thus, Ratledge and instant disclosure make obvious the use of the instant paraffinic oil and metolachlor.

Response to Applicant's Argument

Applicant argues that the Examiner relies on Applicant's original specification with Musselman to reject Applicant's claims is improper. However, Applicant's own

Art Unit: 1616

specification does not qualify as prior art under 103(a). The Examiner argues that the specification is used as an admission rather than as prior art. The specification teaches that metolachlor and triazine are equivalent since the claims recite that either compound in the claims can be used.

Applicant teach that Ratledge teach or suggest to an Artisan in the field to make a herbicide composition comprising metolachlor. Applicant argues that the phrase “and the like” with respect to herbicides recited in Musselman refer to specific herbicides recited in Musselman, not to metolachlor as recited in the instant claims. The Examiner argues that the specification recites metolachlor in Markush. Triazine is also recited in the Markush group. This teaching suggests that compounds recited in the Markush group are exchangeable and functionally equivalent, making metolachlor obvious to Use by Musselman.

Applicant argues that the instant claims disclose petroleum oil with a distillation at 10 mm Hg of about 190 degree C to 280 degree C. Applicant argues that Musselman teaches away from herbicide compositions containing Applicant's specified hydrocarbon fluid consisting of a paraffin oil using said variants. The Examiner argues that Musselman et al. teach a non-phytotoxic oil such as paraffins having up to C18 (column 1). Thus, Musselman's C13-C18 paraffinic oil would meet the pressure and temperature requirement of the instant claims.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Election Status

The Elected invention comprising metolachlor and paraffin is not allowed. See rejections above. In the Election requirement, the Examiner indicated that Applicant should specifically name or completely define additional ingredients. The Examiner also explained that if additional ingredients are not specifically named or completely defined, the claims reciting additional ingredients will be withdrawn from examination. See page 2 of Election requirement. The Election requirement is final since actives claimed differ in classification.

Telephonic Inquiry

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ALTON N. PRYOR whose telephone number is (571)272-0621. The examiner can normally be reached on 8:00 a.m. - 4:30 p.m..

Art Unit: 1616

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Alton N. Pryor/
Primary Examiner, Art Unit 1616